

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 17, Article 17, Section 7016(c)
of the Mine Safety Orders

Brakes on Haulage Vehicles - Maintenance**SUMMARY**

This rulemaking proposal is the result of the Occupational Safety and Health Appeals Board (OSHSB) Decision after Reconsideration in Teichert Aggregates, OSHAB Docket No. 01-R5D1-1193. In that decision, the OSHAB noted that Section 7016(c) requires that the brakes of haulage vehicles "be maintained in good condition," but that the standard does not specify what is meant by those words. The OSHAB agreed with the Administrative Law Judge who heard the case that "maintained in good condition" means, at the very least, that the brakes be maintained "in accordance with the manufacturer's recommendations, where available." This requirement is generally applicable to machinery and equipment pursuant to Section 3328(b) of the General Industry Safety Orders (GISO). This proposal would add words derived from Section 3328(b) to Section 7016(c), thereby resolving the ambiguity noted in the OSHAB decision.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 7016(c). Haulage Vehicle, Construction and Maintenance.**

This section contains requirements for equipping and maintaining haulage vehicles used in mining operations. Subsection (c) concerns brakes and other holding devices. The subsection requires, among other things, that brakes "be maintained in good condition." This proposal is necessary in order to remove ambiguity as to what is meant by "maintained in good condition." The proposal does so by adding wording from GSO Section 3328(b) specifying that the brakes be "inspected and maintained as recommended by the manufacturer where such recommendations are available."

DOCUMENT RELIED UPON

Occupational Safety and Health Appeals Board (OSHSB) Decision after Reconsideration in Teichert Aggregates, OSHAB Docket No. 01-R5D1-1193.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.